

State Bar of South Dakota

Ethics Opinion 95-12

September 13, 1995

- *Rules: 7.2, 7.3, 7.4*
- *Subject: Client referral; Solicitation; Legal services plan*
- *Summary: An attorney may not accept an offer to become a participant in a club providing legal referrals to the attorney, including an agreement that the attorney must sign regulating fees charged to club members, other referrals, acceptance of clients. EO 92-19.*

FACTS

You have been contacted by the Legal Club of America, Inc. (“the Club”) and asked by the Club to become a participating attorney in South Dakota. Becoming a participating attorney for the Club would entitle you to receive legal referrals from the Club.

To become a participating attorney in the Club, an attorney must sign a “Participating Attorney Agreement” (“Agreement”). The Agreement provides, among other things, that the participating attorney agrees to charge Club plan-members the fees listed in the “Plan-member Guidebook’s. The Plan-member Guidebook sets a guaranteed maximum hourly rate not to exceed \$59.00 per hour, a guaranteed maximum contingency fee (29% if settled before trial, 36% if awarded during or after trial, and 40% if settled or awarded after an appellate brief is prepared), and a guaranteed fix maximum rate for certain specified matters (e.g., \$250.00 for a Chapter 7 bankruptcy, \$210.00 for a simple divorce, \$295.00 for a regular corporation, etc.).

According to the information provided, to become a Club plan-member eligible for those reduced rates the Club plan-member pays \$52.00 per year direct to the Club. If the Club plan-member has a legal problem they call a customer service telephone number and are given the name of a participating attorney in their area. According to the Agreement, the participating attorney “shall accept each eligible client who requests services or is referred to such attorney as a client” but may “reject an eligible client on any reasonable grounds.” The participating attorney “shall not reject any eligible client seeking services by reason of the amount of fees to which he or she may be entitled to charge under the Guidebook”. If a participating attorney rejects a client, the participating attorney must call the Club service center for notification and encourage the client to contact the service center to seek an alternate attorney. A participating attorney is prohibited from referring a plan-member referral from the Club to any attorney not participating with the Club. The participating attorney does not pay anything to the Club nor does the Club ever reimburse the attorney for any services.

There is no indication in the materials provided how the Club intends to market its plan in South Dakota.

OPINION

It is the opinion of this Committee that participation in the Club is not proper under the South Dakota Rules of Professional Conduct. This Committee has previously determined in Ethics

Opinion 92-19 that participation in a similar program was not proper. In Ethics Opinion 92-19, this Committee determined that giving a fee reduction for participation in a program was giving something of value to a person for recommending the lawyer's services contrary to Rule 7.2(d). Participation in the Club requires you to accept reduced fees in exchange for your participation in the Club and thus runs afoul of Rule 7.2(d). Further, as was the concern in Ethics Opinion 92-19, there is no indication in the materials provided regarding how the Club intends to market this program in South Dakota. As this Committee stated in Ethics Opinion 92-19:

“... this Committee would not approve participation in this program without first knowing how the program was to be marketed in South Dakota so that this Committee could be satisfied that Rules 7.2, 7.3, and 7.4 were being followed.”

For these reasons, this Committee believes that participation in the Club is not proper under the South Dakota Rules of Professional Conduct.

Michael S. McKnight
Chair, Ethics Committee
State Bar of South Dakota